

TITLE:	DISCIPLINARY PROCEDURES					
REFERENCE	PP 05		ISSUE	3		REVISION 0
AUTHOR:	Registration Support					
ISSUE DATE:	27Nov19					

COMPLAINTS AND DISCIPLINARY PROCEDURES

INTRODUCTION

1. All members sign an undertaking to be bound by the Articles of Association of the Institute and the Bye Laws in force from time to time as well as promising to observe the Code of Conduct of the Institute, which is supported by this disciplinary (and appeals) procedure.

“The primary purpose of disciplinary proceedings is not to punish, but to protect the public, to maintain public confidence in the integrity of the profession, and to uphold proper standards of behaviour.” [Lord Collins, R (on the application of Coke-Wallis) v ICAEW, Supreme Court, 2011.]

2. However, regulation is voluntary, non-statutory and part of the membership contract between the Institute and the member. It is therefore not constrained by legal provisions or precedent related to statutory tribunals except insofar as such provisions may have been imported into the contract.

3. The procedure outlined accords with the currently accepted principles of natural justice. It is also considered to be consistent with many of the principles of the “right to a fair trial” contained in Article 6 of the European Convention on Human Rights. It is given further effect in English law by the Human Rights Act 1998 (HRA) - albeit the HRA generally does not apply to this procedure - because Institute membership and Engineering Council registration are voluntary and the Institute is not a “public authority” or carrying out the functions of a public nature as defined in the HRA.

SCOPE

4. This document explains the Institute's disciplinary procedures that may be applied following complaints made against BINDT members and/or Engineering Council registrants for a breach of the Code of Conduct. It should be noted that the Institute's ‘Articles of Association - Register of Members, Section 6 - Exclusion of Members’ may be applied in certain cases where a complaint may not necessarily have been received: for example, where the Institute becomes aware that a member or registrant has for some reason contravened the Code of Conduct, or has for any reason acted in a way whereby termination of membership or registration is deemed appropriate, or has been convicted of, or accepted a caution for, a relevant criminal offence.

AUTHORISING SIGNATURE:		NAME:		David Gilbert	
POSITION:		Chief Executive Officer		DATE:	
27Nov19					
PP05	Iss 3	Rev 0	COMPLAINTS AND DISCIPLINARY PROCEDURES		Page 1 of 11

5. PRINCIPLES OF THE DISCIPLINARY PROCEDURE

- a. Whether conducted in public or in private, the disciplinary procedure shall be clear, open, fair, unbiased and proportionate; essentially, it shall accord with the principles of natural justice;
- b. All persons involved shall respect the confidentiality of the proceedings;
- c. No person shall participate in decision-making in more than one stage of the procedure in any particular case;
- d. While the procedure is the responsibility of Council, it shall delegate authority in order to comply with the third principle above;
- e. Judgement shall be by peers. Staff may provide secretarial support and procedural advice but shall not influence or participate in the decision-making process, even if they are members of BINDT;
- f. There shall be no presumption of liability until a breach of the Code of Conduct is admitted or proved. Decisions shall be based on the appropriate standard of proof (see Para 14.a below).
- g. Proved breaches of the Code of Conduct shall attract sanctions (see Para 14.c below) commensurate with the seriousness of the breach;
- h. More comprehensive processes may be required where there is a ‘licence to practise’ issue (see Paras 6.b.iv and 21 below), and in particular if the Institute is exercising a statutory regulatory function;
- i. Training shall be given to those involved in assessing and adjudicating complaints;
- j. Clear timescales shall be established for each stage of the procedure and progress shall be actively monitored by a senior staff member;
- k. A written record shall be made of each stage of the proceedings. These records shall be maintained for a defined minimum period.

PROCEDURE

6. On receipt of a complaint against a member or registrant for breach of the Code of Conduct, a **Preliminary Investigation** will decide whether or not there is a case to answer.

AUTHORISING SIGNATURE:		NAME:	David Gilbert
POSITION:	Chief Executive Officer	DATE:	27Nov19
PP05	Iss 3	Rev 0	COMPLAINTS AND DISCIPLINARY PROCEDURES
			Page 2 of 11

a. Preliminary Investigation. A Preliminary Investigation by an **Investigating Panel** will decide whether or not there is a case to answer. Such investigation shall be conducted by a panel, which can comprise at least one nominated member of the Institute as decided by Membership, Qualification and Education Committee (MQ&E). The investigation shall first determine whether the alleged misconduct would, if admitted or proved, lie within the ambit, or jurisdiction, of a **Disciplinary Panel**. If so, evidence shall be assembled to assess the validity of the complaint. The subject of the complaint shall be informed and kept informed of developments; evidence submitted by the complainant shall be disclosed to the subject and vice versa. The Preliminary Investigation shall determine whether any criminal or civil court proceedings related to the alleged misconduct are likely or under way. If so, then the disciplinary hearing shall not proceed until court proceedings, including any appeal, are complete, since the court proceedings might otherwise be prejudiced. Where the subject has been convicted of a criminal offence or found liable in a civil court, the disciplinary hearing shall separately determine whether the subject’s conduct (including, but not limited to, that proven in court) amounts to a breach of the Institute’s Code of Conduct. [An adverse court verdict shall not in itself form the basis of a complaint.]

- i. No case to answer. A decision of ‘**no case to answer**’ shall result in the dismissal of the complaint. The subject and the complainant shall be informed of the reason for the decision (lack of jurisdiction or insufficiency of evidence). Records of the complaint, including the evidence, shall not be maintained beyond the time limit for any appeal by the complainant against the decision.
- ii. Case to answer. A finding that there is a ‘**case to answer**’ shall result in a referral to a Disciplinary Panel. The ‘case to answer’ shall be framed in detailed and particular terms, clearly related to the Code of Conduct, such that the allegation(s) can be understood by the subject. The Investigating Panel shall give written notice to the Disciplinary Panel and to the member against whom the allegation is made of the allegation(s) against them. The Investigating Panel shall place before the Disciplinary Panel all such information as is available in relation to the allegation (by documents or by the testimony of witnesses) at least 28 days before the date of the hearing before the Disciplinary Panel. A minor case to answer shall not be summarily or informally dealt with within this stage of the procedure.

b. Disciplinary Hearing and Disciplinary Panel. The Disciplinary hearing shall be conducted by a Panel comprising a minimum of three independent members of the Institute of the same grade as, or higher grade than, the member against whom the complaint has been raised. The Panel, which acts as an impartial assessor of the complaint, shall be appointed by MQ&E and have a Chair who reports directly to Council. If the complaint is admitted or upheld, the Panel also decides sanctions (see

AUTHORISING SIGNATURE:		NAME:	David Gilbert
POSITION:	Chief Executive Officer	DATE:	27Nov19
PP05	Iss 3	Rev 0	COMPLAINTS AND DISCIPLINARY PROCEDURES
			Page 3 of 11

Para 14.c below) and advises Council of its finding. Selection of Panel members shall be governed by the following guidelines:

- i. Panel members shall be independent. [If an individual who is asked to serve on any panel has a **conflict of interest** in relation to any part of the allegations, or has a connection with the subject or the complainant which creates a real danger of bias, or which could cause others to think it could influence his/her decision, he/she shall declare it and disqualify himself/herself from participating.]
- ii. No member of the Panel shall be related to the member against whom the complaint has been raised in any way.
- iii. A person who has participated in a Preliminary Investigation shall not act as a member of the Disciplinary Panel for the same case.
- iv. In cases, where a loss of PCN certification or potential loss of livelihood may be involved, one or more lay members (that is, persons not from the same discipline or profession as BINDT Panel members) shall be included on the Panel.
- v. Consideration shall be given to inviting a legal adviser to attend to advise the parties on the legal process but not to vote on the decision - particularly for extended disciplinary hearings.

THE DISCIPLINARY PROCESS

7. The disciplinary process involves the collection, examination and clarification of evidence. Prejudicial material that is irrelevant to the ‘case to answer’ shall not be presented to the Disciplinary Panel.

8. The Disciplinary Panel shall notify the subject of the allegation(s) as soon as possible and in any event no fewer than 28 days prior to the date of the disciplinary hearing before the Disciplinary Panel. The subject shall be informed of the date of the hearing and of the procedures to be adopted by the Disciplinary Panel including the Appeals Procedure. The subject shall be informed of his/her rights including the right to attend, be heard and to deliver an answer to the Disciplinary Panel. The subject shall be supplied with a copy of the allegation(s) and of all documents or statements provided to the Disciplinary Panel.

9. Where the allegation relates to matter of a specialised nature, the Panel shall consider engaging an independent expert witness. The Panel may make a decision after examining the evidence or, in more serious or complex cases, organise an extended hearing to which all parties are invited.

AUTHORISING SIGNATURE:		NAME:	David Gilbert
POSITION:	Chief Executive Officer	DATE:	27Nov19
PP05	Iss 3	Rev 0	COMPLAINTS AND DISCIPLINARY PROCEDURES Page 4 of 11

10. Parties involved shall be entitled to invite to the hearing either:
- a. a lawyer, whom they may pay to represent them, including to speak on their behalf; or
 - b. A non-lawyer “McKenzie Friend”¹, who may support, quietly advise and take notes for them but may not speak on their behalf.
11. Either party shall be required to give reasonable advance notice if they intend to be legally represented, so that the other party can arrange legal representation if considered necessary.
12. Consideration shall be given to adjourning the hearing if the subject is unable to be present or represented as it is in the interests of all parties that they attend wherever possible to present their cases. Even if the subject fails to appear on the day, a brief adjournment shall be considered to allow enquiries to be made.
13. The hearings shall be conducted with transparent fairness. They comprise a statement by the investigator (or his/her representative) of the complaint and evidence to support it (with any cross-examination of witnesses) followed by a rebuttal (by the subject or his/her representative) with evidence (which is also open to cross-examination). Additionally, evidence may include written statements, at the Panel’s discretion. Neither party shall be ‘ambushed’ with new evidence that has not been disclosed in advance. A complainant may be invited or permitted to attend the proceedings (accompanied if desired by a ‘friend’) and may be called as a witness, but shall have no automatic right of audience.
14. A subject who resigns their membership after a complaint has been made shall be deemed to remain in membership until the disciplinary process has reached its decision. If the decision is that the subject be expelled from membership, the decision shall remain on record for sufficient time to prevent the subject regaining membership [See Para 27.a].
- a. Burden of Proof. Judicial guidance indicates that the standard of proof (civil or criminal standard) shall be appropriate to the gravity of the matter and the likely consequences if the alleged breach is upheld. There are no other ‘in between’ standards. The Panel shall make clear to the parties which standard is being applied to a particular case. However, the standard of proof applies only to decisions relating to disputed facts. Whether or not and/or to what extent the proven facts amount to professional misconduct or fitness to practise is for the Panel to judge.

¹ As defined at <http://courtwithoutalawyer.co.uk/mckenzie-friends.html>

AUTHORISING SIGNATURE:		NAME:	David Gilbert
POSITION:	Chief Executive Officer	DATE:	27Nov19
PP05	Iss 3	Rev 0	COMPLAINTS AND DISCIPLINARY PROCEDURES Page 5 of 11

- i. Civil Standard. The burden of proof is normally the civil standard, the ‘**balance of probabilities**’.
 - ii. Criminal Standard. Where serious misconduct, rather than lack of competence, is alleged, or where loss of livelihood could result, the criminal standard, ‘**beyond reasonable doubt**’ is likely to be appropriate.
- b. Complaint is admitted or upheld. If the complaint is admitted or upheld, the Panel determines which section of the Articles of Association, Bye Laws or Code of Conduct has been breached, hears any mitigation and decides the sanction and/or other consequences.
- c. Sanctions. If the Disciplinary Panel finds a subject of any grade of membership and/or registration to have been guilty of improper conduct, the Panel hearing the allegation may order one of the following sanctions together with a further order as to PCN Certification (where PCN certification is held) and costs, that is, that the member shall pay a specified sum of money as a contribution to the costs of the proceedings. However, if the complaint against the subject is not upheld and the subject is found not to have been guilty of improper conduct, the Panel may order that the whole or any part of the subject’s costs be paid out of the funds of the Institute. In consideration of the sanction to be applied, the Disciplinary Panel shall take note of guidance on further possible actions² and the appropriateness of ‘fines’³.
- i. Permanent loss of membership. The subject shall be permanently removed from the Register of Members and cease to qualify for any rights and privileges of membership without any right to any refund of subscription or other fees paid in respect of periods yet to expire; or
 - ii. Temporary loss of membership (Suspension). The subject shall be temporarily removed from the Register of Members (suspended) for

² *In addition to a prescribed sanction, the Disciplinary Panel may recommend further action such as permission for the member to access facilities for maintenance of CPD, retraining during suspension and/or the provision of advice on future actions.*

³ *Fines are not appropriate, since sanctions do not represent punishment. Similarly, terms such as ‘accused’, ‘offence’, ‘guilty’, ‘verdict’ and ‘penalty’ shall be avoided.*

AUTHORISING SIGNATURE:		NAME:	David Gilbert
POSITION:	Chief Executive Officer	DATE:	27Nov19
PP05	Iss 3	Rev 0	COMPLAINTS AND DISCIPLINARY PROCEDURES Page 6 of 11

a stated period. During the period of suspension, such person shall be denied all the rights and privileges of membership without any right to any refund of subscription or other fees paid in respect of periods yet to expire. At the same time, the subject shall have no liability to pay any further subscription or fees referable for that period; or

- iii. A Reprimand. The subject shall be given a reprimand that is severe reproof of their conduct or behaviour without any loss of the rights and privileges of membership, but with a written warning that any further finding of improper conduct may lead to the making of an order as described in Paras 14.c.i or 14.c.ii above; or
- iv. An Admonition. The subject shall be admonished, that is shall be given warning advice on their conduct or behaviour without any loss of the rights and privileges of membership, but with a verbal warning that any further finding of improper conduct may lead to the making of an order in the terms described in Paras 14.c.i, 14.c.ii or 14.c.iii above; or
- v. A Referral to Council in respect of PCN Certification. In cases where the subject holds certificates in ‘personal certification’ under the ‘*Personnel Certification in NDT (PCN)*’ scheme, the matter shall be referred to Council with a recommendation that the continued right to hold such certificates be reviewed. [*This sanction may be applied on its own and/or in conjunction with any of the sanctions detailed above.*]

- d. Costs. An order for costs could in some circumstances be appropriate, for example if the Institute had found it necessary to engage a lawyer because the subject had given notice of his/her intention to do so. However, irrespective of the outcome of the case, the Institute shall not be liable to reimburse the complainant’s or the subject's expenses or legal costs arising at any stage of the disciplinary process. Nor shall the Institute be held liable for any of the direct or indirect consequential costs of any of the parties howsoever arising.

15. The subject shall be advised verbally as soon as practicable after the Disciplinary Panel has made its decision. The decision, together with the reasons for any findings of improper conduct, shall be confirmed in writing to the member by the Secretary (Chief Executive Officer) of the Institute, within 28 days of the date on which the Disciplinary Panel makes the decision.

AUTHORISING SIGNATURE:		NAME:	David Gilbert
POSITION:	Chief Executive Officer	DATE:	27Nov19
PP05	Iss 3	Rev 0	COMPLAINTS AND DISCIPLINARY PROCEDURES Page 7 of 11

16. Where the Disciplinary Panel determines that a member be expelled or suspended, the expulsion or suspension shall take effect immediately from the Secretary’s (Chief Executive Officer’s) written confirmation of the penalty (so far as practicable) notwithstanding any subsequent appeal. If the member to be expelled is an Engineering Council registrant through their BINDT membership, registration will also be removed.

17. The subject shall be advised that they may appeal against the decision by notifying the Secretary (Chief Executive Officer) of the Institute that he/she wishes to appeal. Further, where loss of registration will occur, a subject shall be advised that they may appeal against the loss of registration by notifying the Secretary (Chief Executive Officer) of the Institute that he/she wishes to appeal to The Engineering Council.

DELIVERY OF REPRIMAND OR ADMONITION

18. Where the Disciplinary Board determines that a reprimand or admonition shall be given, the subject shall attend at a time and venue determined by the Institute, where the reprimand or admonition shall be delivered by the chair of the Disciplinary Panel in the presence of the Secretary (Chief Executive Officer). A written copy of the reprimand or admonition shall be provided to the subject.

RIGHT OF APPEAL

19. A right of appeal is available to the complainant following the preliminary stage and to the subject following the disciplinary hearing stage. Any appeal must be lodged within 28 days. The appeal process consists of two parts: Leave (permission) to appeal and, if granted, Hearing by an Appeal Panel.

- a. Leave (Permission) to appeal. Leave (Permission) to appeal is not granted automatically and one or more specific grounds shall be identified. The argument under each ground must stand on its own. Leave to appeal may be granted on two or even more grounds, but shall not be granted in response to an accumulation of individually insufficient arguments under two or more grounds. The normally recognised grounds for appeal are:
 - i. Jurisdiction: the alleged misconduct was not within the scope of the provisions of the Bye Laws or the Code of Conduct;
 - ii. Procedure: the procedure was not followed;
 - iii. Perversity: the decision was perverse in the light of the evidence;

AUTHORISING SIGNATURE:		NAME:	David Gilbert
POSITION:	Chief Executive Officer	DATE:	27Nov19
PP05	Iss 3	Rev 0	COMPLAINTS AND DISCIPLINARY PROCEDURES Page 8 of 11

- iv. New evidence: evidence is available which could not reasonably have been produced at the original hearing and additionally for an appeal against a Disciplinary Panel decision;
 - v. Proportionality: the sanction was disproportionate to the gravity of the breach.
- b. Hearing by an Appeal Panel. The Appeal shall be considered by persons who have had no contact with the case beforehand. The Institute might decide to have a legal advisor in attendance for either or both parts of the process.
- i. Appeal against ‘no case to answer’. An appeal against ‘no case to answer’ shall be considered by one person independent of BINDT. In these circumstances only, leave to appeal and the appeal itself may be considered as a single process and be conducted by the same person. If there are valid grounds for appeal, that person shall review the material presented to the Preliminary Investigation, the record of its decision and any additional evidence admitted. If the **independent reviewer** decides that there is a ‘case to answer’ the Institute shall refer the case to a Disciplinary Panel.
 - ii. Leave to appeal against a’ Disciplinary Panel decision’. Leave to appeal against a Disciplinary Panel decision shall be considered by a panel of three members. If leave to appeal is granted, the Institute shall with minimum delay convene an **Appeal Panel** comprising at least three persons including one lay person independent of BINDT. It shall be as independent of Council as is practical bearing in mind the need to understand and weigh specialist subject matter. The appeal hearing shall follow the same principles as the disciplinary hearing, modified to suit the accepted grounds for appeal; a full re-hearing is not essential in all circumstances. If the appeal is upheld, the Appeal Panel may reverse the decision of the Disciplinary Panel or up-hold its decision but reduce the sanction.

APPEAL TO THE ENGINEERING COUNCIL

20. Normally, appeal to the Engineering Council is only available if a member, in losing his/her membership as a result of disciplinary action by the Institute, also loses his/her registration and the Institute’s appeal process has been exhausted. This appeal is

AUTHORISING SIGNATURE:		NAME:	David Gilbert
POSITION:	Chief Executive Officer	DATE:	27Nov19
PP05	Iss 3	Rev 0	COMPLAINTS AND DISCIPLINARY PROCEDURES Page 9 of 11

carried out under the relevant Engineering Council Regulation. Complaints not amounting to an appeal to the Engineering Council in respect of other matters may result in the Engineering Council discussing the case with the Institute only to confirm that the procedure approved as part of the licensing process had been followed. The Secretary (Chief Executive Officer) of the Institute will notify the Engineering Council whose decision on registration shall be final.

BINDT COUNCIL

21. While Council shall be notified of the progress and outcome of a disciplinary case, it shall not be invited to ratify the finding and sanction, since it has not heard the evidence. However, if Council chooses to discuss a case, any person who is or has been involved in the process shall absent himself. At least 21 days’ notice shall be sent to all Council members that the possible exclusion of a member will be dealt with as Special Council business. As stated in Para 4 above, in exceptional circumstances Council reserves the right to exclude members.⁴

PUBLICATION OF BREACHES OF CODE OF CONDUCT

22. The Institute reserves the right to publish details of established breaches of the Code of Conduct, which will, in the case of a registrant, include informing the Engineering Council. This might in fairness extend to publishing, at the request of the subject, notification that a complaint has not been upheld. BINDT will inform the Engineering Council of any expulsion, and whether or not the subject is registered through the Institute. Where a complaint is upheld and the appeal process exhausted, the Engineering Council is responsible for informing any other institutions of which the registrant is known to be a member, so that they may decide what action shall be taken.

RECORDS OF PROCEEDINGS

23. An impartial record shall be made of every preliminary investigation and of each hearing within the disciplinary and appeals process. The record shall comprise:

- a. A copy of all written evidence submitted;
- b. A summary of the oral evidence in support of the alleged breach and in rebuttal or mitigation, including any salient points elicited in cross-examination;
- c. A summary of the Panel’s reasons for its decision.

⁴ See The British Institute of Non-Destructive Testing - Articles of Association - Second Tier Document - Register of Members, Section 6 - Exclusion of Members.

AUTHORISING SIGNATURE:		NAME:	David Gilbert
POSITION:	Chief Executive Officer	DATE:	27Nov19
PP05	Iss 3	Rev 0	COMPLAINTS AND DISCIPLINARY PROCEDURES Page 10 of 11

24. Summaries shall be in a form similar to minutes of a meeting: they shall not be verbatim records but shall contain sufficient detail for a reviewer to understand the issues and to be able to judge whether the proceedings had been fairly and properly conducted. Summaries of hearings shall not be written by a person who has played any other part in any stage of the proceedings, and shall be approved by the Panel Chair.

25. The summary of the Panel’s reasons for its decision shall be disclosed to both parties with the notification of the decision. Any further disclosure, for example in the event of an appeal, shall be made equally (in both timing and content) to both parties.

26. Following completion of a case (or expiry of any period of notice to appeal) written evidence and any summaries shall be maintained for a minimum of six [6] years. For serious cases, this period may be extended beyond the minimum stated.

27. All records relevant to any investigation of accusations of misconduct shall be kept with the member’s personal file.

- a. Expulsion from membership and/or registration. In cases, where a member has been expelled from membership and/or registration, the summary shall be kept beyond any minimum period specified for re-application of membership. In such cases, written (and, if taken, audio) evidence shall not normally be kept beyond expiry of any period of notice to appeal. All records of former members excluded from membership shall be retained for not less than twenty-one [21] years.

AUTHORISING SIGNATURE:		NAME:	David Gilbert
POSITION:	Chief Executive Officer	DATE:	27Nov19
PP05	Iss 3	Rev 0	COMPLAINTS AND DISCIPLINARY PROCEDURES Page 11 of 11